



DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R7–ES–2012–0033; 70120–1113–0000–C3]

RIN 1018–AW57

Endangered and Threatened Wildlife and Plants; Establishment of a Nonessential Experimental Population of Wood Bison in Alaska

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), in cooperation with the State of Alaska, will reestablish the wood bison, a federally threatened species, in historical habitat in central Alaska. We will reestablish the wood bison under section 10(j) of the Endangered Species Act of 1973, as amended (ESA), and will classify any

populations reestablished in the nonessential experimental population (NEP) area as part of the NEP identified in this rule. This final rule also establishes provisions under which wood bison in Alaska will be managed, and provides a plan for establishing the NEP and allowing for legal incidental taking of wood bison within the defined NEP area.

DATES: This final rule is effective on [INSERT DATE 30 DAYS AFTER THE DATE OF FEDERAL REGISTER PUBLICATION].

ADDRESSES: This final rule and the final Environmental Assessment (EA) are available on <http://www.regulations.gov> at Docket No. FWS–R7–ES–2012–0033 and available from our Web site at

http://alaska.fws.gov/fisheries/endangered/species/wood_bison_reintroduction.htm.

Comments and materials received, as well as the supporting file for this final rule will be available for public inspection, by appointment, during normal business hours, at the U.S. Fish and Wildlife Service Regional Office, Fisheries and Ecological Services, 1011 E. Tudor Rd., Anchorage, AK 99503. Additional background and supporting information is provided in the Alaska Department of Fish and Game (ADF&G) Environmental Review of Wood Bison Restoration in Alaska (ADF&G 2007), which can be accessed online at: <http://www.adfg.alaska.gov/index.cfm?adfg=woodbison.management>.

FOR FURTHER INFORMATION CONTACT: Jenifer Kohout, 1011 East Tudor Road, Anchorage, AK 99503, (907) 786–3687, or email jenifer_kohout@fws.gov. If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Executive Summary

Under the ESA, the Service may establish an experimental population, allowing for the reintroduction of a species to its former range with special rules that allow for some of the management requirements of the ESA to be relaxed to facilitate acceptance by local landowners and managers. The Alaska Department of Fish and Game (ADF&G) plans to reintroduce wood bison (*Bison bison athabasca*) into one or more of three areas within their historical range in central Alaska (Yukon Flats, Minto Flats, and the lower Innoko/Yukon River area). Under this final rule, ADF&G will have primary management responsibility for leading and implementing the wood bison restoration effort, in cooperation with the Service. ADF&G will serve as the lead agency in the reintroduction and subsequent management of wood bison in Alaska; however, ADF&G will continue to coordinate with the Service on these restoration efforts. Management of populations in the NEP area will be guided by provisions in: (1) the associated special rule; (2) the EA for this action and ADF&G's environmental review; and (3) site-specific management plans developed for each area by ADF&G with involvement of landowners and other stakeholders. The rule will also allow for future regulated hunting based on sustained

yield principles, once the herds are deemed sufficiently resilient to support such.

Background

Legislative

In Canada, wood bison were listed by the Committee on the Status of Endangered Wildlife in Canada (COSEWIC) as endangered in 1978, and downlisted to threatened in 1988. At that time, COSEWIC listings were not recognized under a specific Federal endangered species act. The Species at Risk Act (SARA) was enacted in 2003. Currently, COSEWIC recommends listings to appropriate Federal departments, which then accept or reject these listings under SARA. When SARA came into force, the listing of wood bison as threatened was recognized under that Act (G. Wilson, Canadian Wildlife Service, in litt., 2013). In the United States, the wood bison was first listed under the Endangered Species Conservation Act of 1969 as endangered (see 35 FR 8491, June 2, 1970). The Canadian National Wood Bison Recovery Team petitioned the Service to reclassify the wood bison as threatened on November 26, 2007, and on February 8, 2011, we published in the **Federal Register** (1) a 12-month finding indicating that the petitioned action was warranted, and (2) a proposed rule to reclassify the wood bison as a threatened species (76 FR 6734). On May 3, 2012, the status of the wood bison was reclassified to threatened (76 FR 26191).

Under the ESA, species listed as endangered or threatened are afforded protection largely through the prohibitions of section 9, the requirements of section 7, and

corresponding implementing regulations. Section 9 of the ESA and its implementing regulations at 50 CFR 17.21 and 17.31, in part, prohibit any person subject to the jurisdiction of the United States to take (“take” includes to harass, harm, pursue, hunt, shoot, wound, kill, trap, or collect, or to attempt any of these), import or export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce, any listed species. The term ‘harm’ is further defined to include significant habitat modification or degradation that results in death or injury to listed species by significantly impairing behavioral patterns such as breeding, feeding, or sheltering. It also is illegal to knowingly possess, sell, deliver, carry, transport, or ship any wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

Section 7 of the ESA and its implementing regulations at 50 CFR 402 outline the procedures for Federal interagency cooperation to conserve federally listed species and protect designated critical habitats. Under section 7(a)(1) of the ESA, all Federal agencies are directed to use their authorities in furtherance of the purposes of the ESA by carrying out programs for the conservation of endangered or threatened species. Section 7(a)(2) of the ESA states that Federal agencies will, in consultation with the Service, ensure that any action they authorize, fund, or carry out is not likely to jeopardize the continued existence of a listed species or result in the destruction or adverse modification of designated critical habitat. Section 7 of the ESA does not affect activities undertaken on private lands unless they are authorized, funded, or carried out by a Federal agency.

Congress amended the ESA in 1982 with the addition of section 10(j), which provides for the designation of specific reintroduced populations of listed species as “experimental populations.” Under section 10(j), the Secretary of the Interior can designate reintroduced populations established outside the species’ current range as “experimental.” Section 10(j) is designed to increase our flexibility in managing an experimental population by allowing us to treat the population as threatened, regardless of the species’ designation elsewhere in its range. A threatened designation allows us discretion in devising management programs and special regulations for the population. Further, when we promulgate a section 10(j) rule for a species, the regulations at 50 CFR 17.31 that extend most section 9 prohibitions to threatened species do not apply, as the generic regulations are superseded by the section 10(j) rule, which contains the specific prohibitions and exemptions necessary and appropriate to conserve that species.

As experimental populations uniformly carry “threatened” status, section 4(d) of the ESA applies. Section 4(d) of the ESA allows us to adopt whatever regulations are necessary and advisable to provide for the conservation of a threatened species. Although the ESA limits the type of regulated take available for the conservation of threatened species, the Secretary is granted broad flexibility in promulgating “special” regulations under section 4(d) of the ESA to protect threatened species, and may allow for direct take, as has been done in the past, for example, with Gila trout (71 FR 40657, July 18, 2006).

Based on the best available information, we must determine whether experimental populations are “essential” or “nonessential” to the continued existence of the species. Experimental populations, whether essential or nonessential, are treated as threatened species. However, for section 7 interagency cooperation purposes only, an NEP located outside of a National Wildlife Refuge or National Park is treated as a species proposed for listing.

When members of the NEP are located outside a National Wildlife Refuge or National Park Service unit, only two provisions of section 7 of the ESA apply: Section 7(a)(1) and section 7(a)(4). In these instances, NEPs provide additional flexibility because Federal agencies are not required to consult with us under section 7(a)(2) of the ESA. Section 7(a)(4) requires Federal agencies to confer (rather than consult, as required under section 7(a)(2)) with the Service on actions that are likely to jeopardize the continued existence of a species proposed to be listed. A conference results in conservation recommendations that are optional as the agencies carry out, fund, or authorize activities. However, because an NEP is by definition not essential to the continued existence of the species, it is very unlikely that we would ever determine jeopardy for a project impacting a species within an NEP. Thus, regulations for NEPs may be developed to be more compatible with routine human activities in the reintroduction area.

Animals used to establish an experimental population may be obtained from a source or donor population provided their removal is not likely to jeopardize the continued existence of the species and appropriate permits have been issued in accordance with 50 CFR 17.22. In 2008, ADF&G imported 53 wood bison into Alaska after necessary permits and approvals were obtained. The primary original source of Alaska's wood bison is a captive-bred population at Elk Island National Park (EINP), Alberta, Canada, which was propagated for the purpose of providing disease-free stock for reestablishing populations in other parts of the species' original range (Gates *et al.* 2001, p. 15). These animals and additional disease-free wood bison (obtained as a result of an illegal import in 2003) and their progeny are presently maintained at the Alaska Wildlife Conservation Center (AWCC) in Portage, Alaska.

Canada's "National Recovery Plan for the Wood Bison" included the specific goal of reestablishing at least 4 viable populations of 400 or more wood bison in Canada (Gates *et al.* 2001, pp. 32–33). This plan supported fostering the "restoration of wood bison in other parts of their original range and in suitable habitat elsewhere" but set no discrete goals for recovery in other parts of the species' range. The Wood Bison Recovery Team placed a high priority on the reintroduction of wood bison to Alaska (Gates *et al.* 2001, pp. 32–33). The reestablishment of free-ranging, disease-free wood bison in Alaska would contribute to the overall conservation of wood bison in North America. However, future loss of a wood bison NEP from Alaska would not reduce the likelihood of the species' survival in its current range in Canada, which encompasses the

only populations Canada evaluates when considering the status of the species for listing purposes under SARA. Consequently, because their loss would not appreciably reduce the likelihood of survival of the species in the wild, the Service finds that any wood bison populations established in Alaska would meet the definition of “nonessential” (*see* 50 CFR 17.80(b)). Therefore, we hereby designate a nonessential experimental population of wood bison in Alaska.

Biological

Members of the family Bovidae, wood bison are the largest native terrestrial mammal in the western hemisphere, with adult bulls weighing 2,000 pounds (900 kilograms) or more (Reynolds *et al.* 2003, p. 1015). Wood bison are somewhat larger than the other extant bison subspecies in the United States, the plains bison (*B. b. bison*), and are distinguished by a more pronounced hump, forward-falling display hair on the head, reduced chaps and beard, and different demarcation on the cape (van Zyll de Jong *et al.* 1995, pp. 393–396). Specimen collections and historical accounts indicate that the historical range of wood bison included much of interior (an area generally described as the Yukon and Kuskokwim river drainages east of their common delta area) and south-central Alaska, and the Yukon, the western Northwest Territories, northern Alberta and British Columbia, and part of northern Saskatchewan in Canada (Stephenson *et al.* 2001, pp. 135–136; Reynolds *et al.* 2003, pp. 1012–1013; Wilson, in litt. 2013). Wood bison are predominantly grazers, foraging mainly on grasses and sedges that occur in northern meadows (Larter and Gates 1991, p. 2679).

Wood bison were present in Alaska for most of the last 5,000 to 10,000 years (Stephenson *et al.* 2001, pp. 125, 145–146). Detailed historical accounts from Athabascan elders in Alaska describe how bison were hunted and used and indicate that bison were an important source of food for Athabascan people before the bison population declined to low levels within the last few hundred years (Stephenson *et al.* 2001, pp. 128–134). The most recent recorded sightings of wood bison in Alaska were from the early 1900s of small groups or single animals in northeastern Alaska (Stephenson *et al.* 2001, pp. 129–134). Factors leading to the extirpation of wood bison from Alaska most likely included unregulated hunting by humans, along with the isolation of subpopulations caused by changes in habitat distribution during the late Holocene (Stephenson *et al.* 2001, pp. 146–147).

Wood bison were largely extirpated from much of their original range in Alaska and Canada by about 1900 (Stephenson *et al.* 2001, p. 140). At that time, only a few hundred animals existed in northeastern Alberta. Intensive conservation efforts in Canada beginning around 1900 are principally responsible for preventing the species' extinction (Gates *et al.* 2001, pp. 11–21). However, the translocation of surplus plains bison into Wood Buffalo National Park in the 1920s (Carbyn *et al.* 1993, pp. 25–27) resulted in some genetic dilution of wood bison, as well as the introduction of domestic cattle diseases into this population (Gates *et al.* 2001, p. 35). Cattle diseases (i.e., bovine brucellosis and bovine tuberculosis) are still a management concern in some herds in the

Wood Buffalo National Park area in Canada (Gates *et al.* 2010, pp. 28–32; USDA 2008, p. 10). The susceptibility of wood bison and other native ungulates to these diseases underscores the importance of rigorous disease-testing protocols prior to releasing wood bison in Alaska (ADF&G–ADEC 2008).

Recovery Efforts

Recovery efforts in Canada have been very successful. In 1978, there was 1 free-ranging, disease-free herd with 300 individuals, the MacKenzie herd. By 2000, when the last Canadian status review was conducted, the number of disease-free herds had grown to 6, with a total of approximately 2,800 individuals. Since 2000, an additional herd has been reestablished, bringing the total number of herds to 7, and the number of disease-free, free-ranging bison has increased to approximately 5,000. Each of 4 of the herds has a population of 400 or more, meeting one of the primary recovery goals. As of May 2013, there were approximately 11,000 wood bison in Canada, including close to 5,000 in 7 free-ranging, disease-free herds (including one outside the original range of the wood bison); 6,000 in 5 free-ranging but diseased herds; and 300 in a captive herd conservation population that is maintained by Parks Canada Agency to provide stock for conservation efforts in the wild (G. Wilson, in litt., 2013; G. Wilson, pers. comm. 2013). There are also 45 to 60 commercial wood bison operations in Canada, including approximately 500 to 700 animals (Canadian Wildlife Service, unpublished data 2009). Although commercial wood bison herds are not a part of Canada’s recovery programs, their existence indicates that wood bison will propagate readily, given sufficient space and proper nutrition.

Under SARA, Environment Canada is responsible for the development of recovery strategies for threatened species like the wood bison. Environment Canada is currently in the process of developing the National Wood Bison Recovery Strategy (Wilson, Environment Canada, 2013, pers. comm.). This document is separate from the 2001 National Wood Bison Recovery Plan, which was developed prior to SARA being enacted. In addition, the State of Alaska has outlined plans for wood bison restoration and will complete detailed, site-specific management plans, developed with public input, for each bison release area before wood bison are reintroduced.

Alaska's restoration effort is supported by conservation authorities in the United States and Canada, including the International Union for the Conservation of Nature (IUCN)/North American Bison Specialist Group, the Wildlife Conservation Society (2013, *in litt.*), the U.S. National Bison Society and Canadian Bison Association (2013, *in litt.*), Alaska Chapter of the Wildlife Society (2013, *in litt.*) and Canada's Wood Bison Recovery Team. These entities regard the restoration effort as having significant conservation value for bison, other wildlife, and the environment. In addition, the Service has worked diligently to assist ADF&G with wood bison reintroduction efforts, and the success of this project has been a priority for the Service. We recognize that the reintroduction presents a good opportunity to support effective conservation of wood bison.

Under this final rule, any wood bison reintroduced to the wild in Alaska will be designated as nonessential to recovery and experimental. The special rule that accompanies this section 10(j) rule is designed to broadly exempt from the section 9 take prohibitions any take of wood bison that is incidental to, and not the purpose of, otherwise lawful activities. We provide this exemption because we believe that such incidental take associated with otherwise lawful activities is necessary and advisable for the conservation of the species, as activities that currently occur or are anticipated in the NEP area, such as oil and gas development and other resource development projects, are generally compatible with wood bison restoration.

This designation is justified because no adverse effects to extant wild or captive wood bison populations will result from release of animals from the captive herd. We also expect that the reintroduction effort will result in the successful reestablishment of self-sustaining populations, which will contribute to the recovery of the species.

Role of Regulated Hunting in Recovery

Regulated hunting has been used in Canada since 1987 to manage wood bison herds and is consistent with the recovery goals in the Canadian wood bison recovery plan. Herds with regulated harvest have increased in size (76 FR 6734, February 8, 2011). The Mackenzie herd, for example, was established in 1963 and first supported harvest in 1987, when the herd had reached approximately 1,500 bison. This herd continued to grow, to a maximum estimated size of 2400 around 1989, and supported an annual

harvest of approximately 40 animals for several years after that point. In recent years, other mortality factors such as the periodic loss of animals to drowning and anthrax, coupled with reduced forage caused by flooding of inland lakes, reduced herd numbers to fewer than 1,000 animals. In response, Canadian managers suspended the regulated harvest in 2012 to enhance growth of the population

(http://www.enr.gov.nt.ca/_live/pages/wpPages/Mackenzie_Bison.aspx, viewed July 26, 2013, and T. Armstrong, NWT Bison Ecologist, pers. comm. 2013).

Regulated hunting has been used in Canada to (1) maintain herd size within the carrying capacity of the landscape; (2) reduce the potential for the spread of disease; (3) address public safety concerns near roads; and (4) increase community support for reestablished wood bison herds. Where hunting is allowed, it can lead to increased revenue for monitoring and management of the herds.

Sustainable levels of hunting of wood bison in Alaska will serve some of these same purposes, including securing the support of project sponsors (e.g., ADF&G, local communities, landowners, and nongovernmental organizations involved in the project). Because reintroduction of wood bison to Alaska depends heavily on this support, including provisions for hunting as a future management option is an essential component of this final rule. Moreover, provisions for future regulated hunting will assure landowners and development interests that the reintroduction of wood bison will not interfere with natural resource development or other human activities. Without such

assurances, the reintroduction of wood bison to Alaska is unlikely to be acceptable to the public, development interests, or the Alaska State Legislature. In addition, hunting is the most feasible option for population management in the future in these remote areas. As mentioned above, wood bison in some herds in northern Canada are legally harvested under Territorial or Provincial hunting regulations, and regulated harvest is considered one of the primary management tools in conservation of the species. Thus, we believe that the opportunity for Alaska to contribute to the overall recovery and conservation of wood bison will be lost if provisions for hunting are not included in this rulemaking.

Alaska Reintroduction Goals and Objectives

The reintroduction of wood bison to Alaska is patterned after successful reintroductions in Canada. The goal of the Alaska wood bison restoration project is to reestablish 1 to 3 free-ranging populations followed by a long-term monitoring and evaluation process to determine feasibility of establishing additional populations in the future. In addition to contributing to the conservation and recovery of wood bison in North America, objectives of the Alaska reintroduction effort include (1) restoring a key indigenous grazing animal to northern ecosystems; (2) restoring biological and habitat diversity and natural processes; (3) increasing the total number of wood bison in free-ranging, disease-free herds, thereby enhancing the overall survival of the species in the wild; (4) providing a regulatory framework that allows for sustainable development, including opportunities for local tourism and hunting and guiding businesses; and (5)

reestablishing the historical cultural connection between bison and Alaska residents (ADF&G 2007, pp. 2–3).

Although many private landowners within the NEP area have indicated support for the presence of wood bison on their lands in the future, some major private landowners have expressed concerns about the potential legal and regulatory burdens related to the ESA if wood bison are reintroduced, including effects on resource development activities. Provisions in the special rule will ensure that the reintroduction of wood bison will not impede existing or potential future resource development activities. Wood bison will be released only after a suitable management framework has been developed by the State in cooperation with landowners, land managers, the Service, conservation organizations, and Tribal and local governments.

Experience with bison reintroductions elsewhere indicates that reintroduced wood bison populations in Alaska are likely to prosper in the areas where the State of Alaska proposes to restore the species (ADF&G 2007, pp. 11–12). However, temporary fluctuations in numbers may occur, which will not constitute a reason to reevaluate or change the NEP status. We do not foresee any likely situation justifying alteration of the NEP designation until the wood bison is no longer listed as endangered or threatened under the ESA, in which case the NEP designation will be discontinued.

Source of Stock

In June 2008, under permits obtained from the Service, the U.S. Department of Agriculture, the Canadian Wildlife Service, and the State of Alaska, ADF&G translocated 53 wood bison from the disease-free EINP herd to a temporary holding facility at the AWCC, where they joined a small existing herd that was confiscated in 2003 after being imported illegally. As of June 2013, the AWCC herd contained about 135 wood bison, and about 35 calves were born in 2012. Because of space constraints and uncertainty regarding the timing of the completion of the section 10(j) rule and availability of release sites, breeding was restricted in 2012, and 12 calves were born in 2013. A larger number of calves can be produced when necessary. (B. Stephenson, ADF&G, pers. comm. 2013). All of these animals have been subjected to a rigorous disease-testing protocol while preparations are made for release of free-ranging wood bison in Alaska (ADF&G–ADEC 2008).

Reintroduction Sites

ADF&G has identified three areas that are expected to provide the best locations for initial release of wood bison in the NEP area. These sites were selected based on intensive evaluations of potential habitat conducted in seven areas in central Alaska between 1993 and 2006 (Berger *et al.* 1995, pp. 1–9; ADF&G 1994, pp. 10–14; Gardner *et al.* 2007, pp. 1–24). Following the recommendations of Canada’s Wood Bison Recovery Team, suitable release sites should: (1) support a minimum population of 400 bison, (2) be separate from areas inhabited by plains bison, and (3) not have conflicting land uses such as agriculture (Gardner *et al.* 2007, p. 2). Based on availability of high-

quality forage, three areas in Alaska—the Yukon Flats, Minto Flats, and lower Innoko/Yukon River—were determined suitable to support viable populations of wood bison (ADF&G 2007, p. 27). The Yukon Flats offers the best habitat and can support in excess of 2,000 bison (Berger *et al.* 1995, p. 8). Minto Flats offers abundant forage, but the area is relatively small, and access to wet habitats may be limited during summer. The lower Innoko/Yukon River area offers suitable habitat that could support 400 or more wood bison (Gardner *et al.* 2007, p. 8). Characteristics of each selected reintroduction site are described in more detail in the EA associated with this action (see **ADDRESSES** for information on obtaining a copy of the EA).

Locations of the three potential wood bison reintroduction sites and boundaries of the NEP are shown in Figure 1 in the rule portion of this document. The boundaries of the NEP represent our interpretation of the best available information on what constituted a major part of the wood bison's historical occurrence in Alaska. This historical range includes substantial areas with little or no suitable bison habitat, interspersed with localized areas that will provide high-quality habitat. By establishing this large area for NEP designation, we do not imply that most or all of the area within the NEP boundary is suitable habitat for wood bison. The boundaries of the designated NEP area are based on the maximum estimated range of wood bison that will be released in and become reestablished in the NEP area. In addition to being readily discernible on the landscape, the areas near the NEP boundaries will generally discourage bison movements, since they include mostly high-elevation habitats or extensive forests that will provide little forage

for bison. We do not expect herds reestablished in the reintroduction areas, which are near the center of the large NEP area (Figure 1) and provide excellent habitat, to move beyond these boundaries.

Reintroduction Procedures

In conformance with recommendations of bison geneticists and conservation biologists, a minimum of about 40 captive-raised wood bison will be released at a single site within the NEP area in the first year of the program, and a similar number may be released at each of two additional sites in subsequent years. Additional bison may be released in each area if stock and funding are available. Released wood bison will be excess to the needs of captive-breeding herds at EINP and AWCC, and their release will not adversely affect the genetic diversity of the captive wood bison populations. Some bison will be radio-collared. Population monitoring will include telemetry studies and aerial population surveys to determine and monitor population size, productivity, and movements.

A temporary holding facility consisting of a small corral and camp, and a supply of hay will be provided at each release site. Ideally, wood bison will be transported to the site in late winter or early spring and held for an appropriate period (depending on weather and other factors) prior to release to allow them to acclimate in their new location and to ensure that the release date coincides with the emergence of spring forage. A more detailed review of reintroduction procedures is included in section 2.6 of the EA

(see **ADDRESSES** for information on obtaining a copy of the EA).

ADF&G, the Service, and reintroduction cooperators will evaluate the success of each reintroduction effort and apply knowledge gained to subsequent efforts, thereby increasing the efficiency and long-term success of wood bison restoration efforts in Alaska. ADF&G will work with various cooperators to monitor population growth and movements, and to conduct basic long-term environmental monitoring.

Legal Status of Reintroduced Populations

Based on the current legal and biological status of the species and the need for management flexibility, and in accordance with section 10(j) of the ESA, the Service will designate all wood bison released within the boundaries of the NEP area in Alaska as members of the NEP. Such designation allows us to establish a special rule under section 4(d) for management of wood bison in Alaska, superseding the general section 9 prohibitions that would otherwise limit our management options. The legal and biological status of the species and the need for management flexibility resulted in our decision to establish the NEP designation for wood bison reintroduced into Alaska.

The section 4(d) special rule associated with this NEP designation furthers the conservation of wood bison by allowing their reintroduction to a large area within their historical range. The special rule provides assurances to landowners and development interests that the reintroduction of wood bison will not interfere with natural resource

developments or with human activities. Without such assurances, the reintroduction of wood bison to Alaska would not be acceptable to the public, development interests, or the State. Except as provided for under sections 10(a)(1)(A) and 10(e) of the ESA or as described in the section 4(d) special rule associated with this NEP rule, take of any member of Alaska's wood bison NEP will be prohibited under the ESA.

Geographic Extent of the Final Rule

The geographic extent for the Alaska wood bison NEP includes the Yukon, Tanana, and Kuskokwim River drainages in central Alaska (refer to Figure 1 in the rule portion of this document). Section 10(j) of the ESA requires that an experimental population be geographically separate from other wild populations of the same species. Because wild wood bison no longer exist in Alaska, the reintroduced herds will not overlap with any existing wild wood bison population. Wood bison herds established in Alaska will be separated from the nearest wild population in Canada (the Aishihik herd in Yukon) by at least 450 miles (725 kilometers) of mostly hilly or mountainous terrain, which will deter long-distance movements between herds. Wood bison and their offspring will likely remain in areas near release sites and well within the boundaries of the NEP area due to the presence of prime habitat (extensive meadow systems that will provide an abundance of preferred forage for bison) and surrounding geographic barriers (Gates and Larter 1990, pp. 235–236; Larter and Gates 1990, p. 604). The geographic area included in the NEP designation represents what ADF&G believes to be the maximum geographic extent to which bison populations might expand if they are

reestablished in interior Alaska, as explained above under “*Reintroduction Sites*.” This issue also is discussed in the “Comments” section of this final rule and in section 2.6 of the EA.

Management

(a) *Authority and planning.* Under this final rule, ADF&G will serve as the lead agency in the reintroduction and subsequent management of wood bison in Alaska; however, ADF&G will continue to coordinate with the Service on these restoration efforts. Under this final rule, the Service delegates management authority to ADF&G, contingent upon periodic reporting in conformity with Federal regulations. Management of populations in the NEP area will be guided by provisions in: (1) the associated special rule; (2) the EA for this action and ADF&G’s Environmental Review; and (3) management plans developed for each area by ADF&G with involvement of landowners and other stakeholders.

ADF&G will use public planning processes to develop implementation and management plans for wood bison restoration. Planning groups will include representatives from local communities, regional population centers, landowners, Alaska Native interests, wildlife conservation interests, industry, and State and Federal agencies, as appropriate for each area. Draft management plans will be circulated for public review, and final plans will be presented to the Alaska Board of Game and Federal Subsistence

Board for review and approval. More detailed information on wood bison reintroduction and management is provided in the EA associated with this action.

(b) Population monitoring. Reintroduced wood bison populations will be monitored annually and during important seasonal periods. Biological data necessary for long-term bison management will be obtained from annual spring population surveys, fall or winter composition counts, and monitoring of herd movements. Bison populations are relatively easy to monitor because of their visibility, gregarious nature, and fidelity to seasonal ranges (ADF&G 2007, p. 12).

Through public outreach programs, ADF&G will inform the public and other State and Federal agencies about the presence of wood bison in the NEP area. Reports of injured or dead wood bison will be required to be provided to ADF&G (see the EA for contact information) for a determination of the cause of injury or death.

(c) Disease monitoring and prevention. Because of the extensive disease-testing programs at EINP (U.S. Department of Agriculture 2008, pp. 5–13) and at AWCC (ADF&G–ADEC 2008), the risk of reintroduced wood bison being infected with serious diseases is negligible. ADF&G will continue to obtain samples for disease testing as opportunities arise in connection with future wood bison radio-collaring efforts or harvests. In the unlikely event that a disease posing a significant threat to wood bison, other wildlife, or humans were to occur, the situation would be addressed through

appropriate management actions, including vaccination or other veterinary treatment, culling, or removal of an entire herd, as described in the EA.

(d) Genetics. Wood bison selected for reintroduction are excess to the needs of the captive populations in Canada. The ultimate goal is to reestablish wild wood bison populations in Alaska with founding animals that are as genetically diverse as possible. Management objectives for each area will be developed during public management planning efforts, with a goal of ensuring that the genetic integrity of wood bison is maintained without further loss as a consequence of human intervention, consistent with the Canadian Wood Bison Recovery Plan.

(e) Mortality. Based on experience in reestablishing bison in other northern habitats, wood bison mortality after release is expected to be minimal (Gates and Larter 1990, p. 235). Based on the results of previous releases of disease-free wood bison, it is unlikely that predator management will be needed to allow populations to be successfully reestablished. A review of predator–prey interactions (ADF&G 2007, p. 43) is available online at:

http://www.adfg.alaska.gov/static/species/speciesinfo/woodbison/pdfs/er_no_appendices.pdf. Predator–prey issues are discussed further in section 4.2.10 of the EA.

Section 10 of the ESA authorizes the Secretary of the Interior to permit “incidental take,” which is take that is incidental to, and not the purpose of, the carrying out of an

otherwise lawful activity, such as recreation, livestock grazing, oil and gas or mineral exploration and development, timber harvesting, transportation, and other activities that are in accordance with Federal, Tribal, State, and local laws and regulations. Under this final rule, a person could lawfully take a wood bison within the NEP area provided that the take is: (1) unintentional, and (2) not due to negligent conduct. Such incidental take would not constitute “knowing take,” and neither the Service nor the State would pursue legal action for incidental take. The special rule associated with this NEP designation (50 CFR 17.84(x)(5); below) specifies the types of incidental take that will be covered. If we have evidence of knowing (i.e., intentional) take of a wood bison that is not authorized, we will refer matters to the appropriate authorities for prosecution.

Highway vehicles and trains can pose a risk to bison (Rowe 2007, p. 8). In Alaska, the only area where vehicle collisions might occur is in the vicinity of the Minto Flats, where the Parks Highway and the Alaska Railroad border the southeastern edge and the Elliot Highway approaches the northern edge of the area. There are currently no roads in the Yukon Flats or lower Innoko/Yukon River area. However, roads could be constructed within these areas in the future to support resource developments or for other purposes.

Unless stated otherwise in regulations, the State of Alaska prohibits hunting of any species, including wood bison, and unless regulations are superseded by Federal regulations, State hunting regulations apply. Prohibition of hunting will be enforced by

the appropriate law enforcement entity with jurisdiction for the area. Public education and enforcement activities are expected to reduce potential sources of human-caused mortality. Based on results of similar efforts in Canada, we expect a low rate of natural or incidental mortality (Gates *et al.* 2001, pp. 30–40). If significant illegal mortality does occur in any given year, the State will develop and implement measures to reduce the level of mortality to the extent possible.

(f) *Special handling.* Under this final rule, ADF&G biologists, Service employees, and authorized agents acting on behalf of ADF&G or the Service may handle wood bison: (1) for scientific purposes; (2) to relocate bison to avoid conflict with human activities; (3) for conservation purposes; (4) to relocate wood bison that have moved outside the NEP area back to the NEP area; (5) to aid sick, injured, or orphaned wood bison; or (6) to salvage dead wood bison. The Service will work with ADF&G to determine appropriate procedures for handling all sick, injured, orphaned, and dead wood bison.

(g) *Potential for conflict with oil and gas development, mineral development, recreation, and other human activities.* Several existing or potential natural resource development projects that could be important to Alaska's economy are located within or near the three potential wood bison restoration sites. Exploration and potential oil and gas development is ongoing in the Minto Flats and Yukon Flats areas, and a gold mine could potentially be established in an area about 30 to 40 miles (48 to 64 kilometers) east of the

expanse of potential wood bison habitat near the lower Innoko/Yukon River area (Liles 2010, p. 1; U.S. Department of the Interior 2005, pp. 1–18; Barrick/Novagold 2008). However, wood bison are relatively tolerant of human activity and resource development activities (ADF&G 2007, p. 47; Fortin and Andruskiw 2003, p. 811). They are mobile and adaptable animals that can use a variety of meadow and forested habitats, depending on the season, and can avoid local disturbances. Their large size and social nature also make them relatively easy to monitor (e.g., by aerial surveys) and manage.

Because wood bison will be introduced as an NEP, we expect that their establishment will not preclude or conflict with the development of oil, gas, and mineral resources or other human activities. Minor conflicts between cattle or other livestock grazing or agriculture and wood bison management might eventually occur in the southeast corner of the Minto Flats, where a few small agricultural operations exist. Such conflicts will be manageable with the flexibility inherent in the final rule and special rule included in this document. Agricultural activities on private lands within the NEP area will continue without additional restrictions during implementation of wood bison restoration activities. We do not expect adverse impacts to wood bison in the NEP area from hunting of other species; furbearer trapping; recreational activities, such as boating, snow machining, off-road vehicle use, or camping; or other resource-gathering activities, such as fishing, firewood cutting, berry picking, or logging.

(h) Protection of wood bison. ADF&G will employ accepted animal husbandry practices to promote the welfare of wood bison during captive holding and release (Weinhardt 2005, pp. 2–21). Releasing wood bison in areas with little human activity and development will minimize the potential for accidental, human-related bison mortality, such as collisions with highway vehicles.

(i) Public awareness and cooperation. ADF&G will work with the Service and other organizations to continue to inform the general public about the effort to restore wood bison to parts of their original range. Through the efforts of ADF&G and others, public and agency awareness of the program on State, national, and international levels is already widespread (ADF&G 2007, pp. 18–25 and Appendix D). Designation of the NEP in Alaska provides assurance of management flexibility to landowners, agencies, and other interests in the affected areas. As described above, through the application of management provisions set forth in the special rule, we do not expect wood bison reintroductions to impede future human activities or other resource developments in the NEP area.

Summary of Peer-Review and Public Comments and Recommendations

In the proposed rule, published on January 18, 2013 (78 FR 4108), we requested that all interested parties submit written comments on the proposal by March 19, 2013. We also contacted appropriate Federal and State agencies, scientific experts and organizations, and other interested parties and invited them to comment on the proposal.

We did not receive any requests for a public hearing.

We reviewed all comments received from the public and peer reviewers for substantive issues and new information regarding the establishment of an experimental population of wood bison in interior Alaska. Comments were grouped into general categories specifically relating to the proposed reintroduction, and are addressed in the following summary and incorporated into the final rule as appropriate.

Peer Review

In accordance with our peer review policy published on July 1, 1994 (59 FR 34270), we solicited expert opinions from four knowledgeable individuals with scientific expertise that included familiarity with the wood bison and its habitat, biological needs, recovery efforts, and threats. We received responses from three of the peer reviewers. In general, the peer reviewers stated that the proposed rule provided a concise and accurate summation of the available scientific information on the biology, current status, and recovery efforts for wood bison, and that the proposed establishment of an NEP in Alaska to facilitate wood bison reintroduction is well supported by the best available scientific information. One peer reviewer raised an issue about the NEP boundaries, as discussed below. We incorporated specific updated information, comments, and suggestions from peer reviewers as appropriate.

Comment: One peer reviewer expressed concern that wood bison may move farther than

anticipated, and suggested expanding the boundaries of the NEP into the land area bordering the southeastern part of Norton Sound.

Our response: The two cases cited by the reviewer that involved relatively extensive bison movements following reintroduction are not representative of most recent bison reintroduction efforts. First, the Aishihik wood bison herd in Yukon exists in habitat characterized by limited and widely scattered low-biomass grasses and sedges, in contrast to the large expanses of high-biomass forage at the proposed release sites in Alaska. In similar high-biomass habitats in Canada, wood bison have shown a strong tendency to remain in home ranges that are much smaller than that used by the Aishihik herd, which must travel widely to find sufficient forage and has gradually developed a large home range as the population grows. Second, in contrast to the techniques planned for wood bison releases here, the release of plains bison decades ago in the Nabesna area was a “hard release,” with no holding period to allow bison to adjust after being transported to a new area. This likely contributed to their traveling some distance from the release site soon after release. Wood bison reintroductions in the NEP area will employ a brief holding period with supplemental feeding to allow bison to acclimatize to their new location, unlike the release of plains bison in the Nabesna area. This concern is addressed further in section 2.6 in the EA.

Comment: One peer reviewer suggested we include a discussion of the potential for hybridization with plains bison.

Our response: ADF&G and the Service are aware of the importance of preventing hybridization between wood bison and plains bison. This issue has been carefully considered in developing the restoration effort, and additional information has been included in section 4.1 of the EA, “Description of Proposed Reintroduction Sites.” We believe the potential for hybridization with plains bison is low. One of the criteria for site selection was that the release sites are located far enough from areas occupied by plains bison to eliminate the possibility of hybridization (ADF&G 2007).

Comment: One reviewer considered it wise to include the role of regulated hunting to build acceptance of bison on the land and support for bison.

Our response: The final rule and EA acknowledge that providing regulated hunting opportunities is one of the important goals of the wood bison reintroduction effort. The importance of hunting in building and maintaining public support has been recognized during project development, and outreach efforts have helped build substantial public support for the restoration effort.

Public Comments

During the comment period for the proposed rule, we received 61 comment letters directly addressing the proposed establishment of an NEP and associated special rule for wood bison. All substantive information provided during the comment period has either

been incorporated directly into this final determination or addressed below. Several of the comments included opinions or information not directly related to the proposed rule, such as views relating to the management of plains bison herds in Alaska or movement and procurement of private wood bison herds. We do not address those comments as they do not have bearing on the NEP for wood bison.

Comment: Several commenters discussed the fact that wood bison are native to the landscape and that the species could play an important part in reestablishing the native flora and fauna of the ecosystem.

Our Response: We agree. Wood bison were historically distributed in interior and south-central Alaska and, if reintroduced, will help to restore the native diversity of the regional ecosystem.

Comment: Two commenters described wood bison as nonnative species in Alaska and considered the real motivation for the reintroduction to be an augmentation of hunting opportunities.

Our response: The scientific community—including paleontologists, anthropologists and archaeologists in Alaska and Canada, the Service, and ADF&G—has concluded that wood bison are clearly a native species in Alaska. The historical data are summarized in section 2.1 of the EA.

Comment: One commenter expressed concern that wood bison may compete with other ungulates, such as moose.

Our response: Evidence from Canada and elsewhere indicates that there is little competition between wood bison and other species, as detailed in sections 4.2.8, 4.2.9 and 4.2.10 of the EA. In parts of Canada, wood bison coexist with high densities of moose with no apparent competition. Similarly, in Alaska, plains bison coexist with moose, with no evident problems.

Comment: One commenter stated that the existence of cattle diseases in bison in Wood Buffalo and Yellowstone National Parks means that modern disease detection and eradication efforts might not be successful in reestablishing healthy wood bison herds.

Our response: The procedures used in recent times at Elk Island National Park and elsewhere have provided disease-free stock for several wood bison reintroductions in Canada, as well as several disease-free plains bison herds in Canada and the United States over the last several decades. A detailed review of disease prevention measures is included in section 4.2.12 of the EA.

Comment: One commenter was concerned that the presence of wood bison could affect grazing leases and permitted water rights.

Our response: Neither of these types of leases or permits currently exists or is anticipated to be issued in the areas being considered for bison reintroduction. In addition, one of the primary purposes of the NEP and associated special rule is to ensure that the reintroduction of wood bison will not impede existing or future resource development activities.

Comment: Several commenters acknowledged that wood bison will be a substantial source of red meat and an important food for subsistence hunters, families, and communities in the reintroduction area. One commenter expressed concern that giving primacy to the State may impact Federal subsistence hunting of this species if it was allowed to be hunted.

Our response: The Service and ADF&G recognize the contribution that harvestable wood bison populations could make to the well-being of local communities and Alaska in general. That ADF&G has led the way in developing the wood bison restoration effort, and will have primary population management authority, does not affect the authority of the Federal Subsistence Board in regulating harvest on Federal lands or the Alaska Board of Game in establishing harvest regulations. As the numbers of reintroduced wood bison increase, opportunities for subsistence and general hunting will be evaluated in the future. As with other resource allocation issues, regulatory agencies will work with the public to determine how wood bison harvests should be allocated.

Comment: One commenter stated that sustained yield hunting is not a scientifically acceptable manner to manage a threatened species.

Our response: Section 10(j) of the ESA allows for the designation of experimental populations to increase flexibility in managing listed populations, including allowing management practices and special regulations necessary to address potential negative impacts or concerns from reintroductions. Designating a population as experimental under section 10(j) and promulgating special rules under section 4(d) thus supersede the generic section 9 prohibitions against “take” of a threatened species.

Section 4(d) gives the Secretary the authority and broad discretion to authorize regulated take of a threatened population if it is necessary and advisable for the conservation of the species. The Service previously has authorized regulated, direct take of threatened species and NEPs. For example, when the Gila trout was downlisted to threatened (71 FR 40657, July 18, 2006), a special rule enabled the states of Arizona and New Mexico to promulgate regulations to allow recreational fishing for Gila trout in some streams within the recovery area. Similarly, the special rule for the Utah prairie dog (77 FR 46158, August 2, 2012) permits direct take in specified areas that the Service determined are not essential to the recovery of the prairie dog. Unlike the regulated hunting based on sustained yield principles expected for wood bison, no sustained yield harvest *per se* was proposed for the trout or prairie dog populations in these examples.

Nonetheless, any allowable take of those species would need to be sustainable to avoid impeding recovery. Thus, the underlying principle and goals for allowing take of a threatened species are similar for all three species.

The Service's goals for allowing regulated, direct take through issuance of special rules for these threatened species are similar to the goals expressed in this rule and the accompanying EA regarding the wood bison NEP. For Gila trout, goals for allowing recreational fishing include increasing the geographic extent of recovery efforts and bolstering public support for those efforts by increasing angling opportunities in streams previously occupied by only nonnative trout (71 FR 40671). For the Utah prairie dog, goals include relieving population pressures in overcrowded portions of the range; alleviating some impacts to agricultural operations, human safety, and important cultural areas; and reducing impacts on private lands adjacent to prairie dog conservation lands (77 FR 46166).

Several of the goals articulated for the wood bison NEP are similar: expanding opportunities to restore species to historically occupied range or other suitable range; controlling depredating animals and animals that travel beyond NEP boundaries; and fostering public support for restoration efforts. As expressed in the EA (p. 2), the overall goal of the wood bison restoration effort is to promote wood bison conservation by "restoring wood bison populations to portions of their former habitat in Alaska so that they are again an integral part of Alaska's wildlife, providing Alaskans and others the

opportunity to enjoy and benefit from this ecologically important northern mammal.”

One of the specific objectives is to reestablish a cultural connection between wood bison and people in Alaska. This connection historically included hunting wood bison for food. Many of Alaska’s citizens continue to depend on wild game for food. Once a self-sustaining population is reestablished, wood bison in the NEP will contribute to this food source. Meeting these objectives requires reestablishing a wood bison population that can be harvested in the future on a sustainable basis for both humans and bison.

Maintaining and strengthening public support for restoration efforts is important. Promulgating this special rule to designate the wood bison NEP establishes a flexible regulatory framework that supports the goals and objectives of the restoration effort and addresses the concerns of private landowners and other stakeholders in the NEP area. Without this provision, the overarching goal of reestablishing a native species in a large portion of its historical range will not be achieved. In addition, given the remoteness of the NEP area, regulated hunting is the most feasible means to maintain wood bison herd size within the carrying capacity of the landscape once the populations are fully reestablished.

Comment: Two commenters expressed concerns that the reintroduction of wood bison will negatively affect potential oil and gas development on the Yukon Flats or Minto Flats, and one asked that the special rule limit reintroductions to the lower Innoko/Yukon River area. Two commenters expressed concerns about effects on potential future

agricultural development. One commenter supported the finalization of the rule, but also cited concerns about potential conflicts with agricultural developments being considered in the area south of Minto Flats and in the Yukon Flats area, and recommended that the initial release of wood bison occur at the lower Innoko/Yukon River site.

Our response: The State of Alaska has indicated that the lower Innoko/Yukon River area will be the first release site, and that it will continue to evaluate the possibility of other reintroductions (D. Vincent-Lang, Alaska Department of Fish and Game, pers. comm. 2013). The establishment of an NEP will support conservation goals while providing flexibility for sustainable resource development projects and reducing conflicts with future oil and gas development, as well as agriculture. Agricultural issues are discussed in section 4.4.3 of the EA. Protection for these and other land uses provided by the final rule as well as the mitigation measures outlined in the EA will allow wood bison restoration to proceed without interfering with potential agricultural developments, oil and gas activities, or other natural resource development projects.

Comment: One commenter raised concern about conflicts between plains bison and agriculture in the Delta Junction area as an indication that the same conflicts could occur in the Minto Flats area.

Our response: In the Delta area, farming expanded into areas north of the Alaska Highway that were already frequented by bison, and many crops were not fenced,

resulting in a pattern of fall and winter use by the Delta bison herd. If reintroduced wood bison were to establish a pattern of movement from the high-quality bison habitat in the Minto State Game Refuge, north of the Tanana River, to potential future agricultural development south of the river, 10 or more miles (16 km) away, the mitigation measures envisioned by ADF&G in the EA for the area west of Nenana will include removing bison that conflict with agricultural operations or taking other actions to discourage bison from continuing to use agricultural lands. Such a pattern of use is unlikely, because current evidence indicates that future agricultural development will occur in areas separate from the bison habitat on the Minto Flats. Because the prospects for conflict are limited and could be mitigated, we do not believe that potential conflicts with agriculture are an obstacle to wood bison restoration.

Comment: The reintroduced NEP will still be a section 7 burden if the animals move onto a Refuge.

Our response: If wood bison move onto a National Wildlife Refuge, they will be considered a threatened species for purposes of section 7 consultation. That means that if the Service or any other Federal agency planned to fund, authorize, or carry out a project on or near a Refuge, the activity will have to be evaluated to determine whether it “may affect” wood bison. If adverse effects were anticipated, we would work to incorporate measures that would minimize those effects. We do not expect this process to become a

burden, as applied to wood bison. No project in Alaska has ever been stopped because of the presence of an endangered or threatened species.

Comment: Several commenters stated that the section 10(j) rule can provide adequate safeguards for other land uses and provide the regulatory framework for wood bison restoration to move forward. One commenter asked for clarification about what circumstances would lead to a change in status as an experimental population.

Our response: The Service agrees that the NEP designation is designed to avoid any potential conflict between natural resource development and wood bison restoration, and we appreciate the support for the provisions of this rule. We do not envision any circumstances under which the status of the NEP would change, unless the wood bison were removed from the threatened species list. No NEP designation has ever been changed to an “essential” experimental population.

To help ensure the continued effectiveness and success of this program following reintroduction, we have added language to clarify that if any particular provision of this rule is found by a court to be legally insufficient or defective, it is the agency’s intention that all remaining management and other provisions will remain in effect.

Comment: One commenter requested clarification on where within the broad NEP area the wood bison will actually be located or migrate in the years following reintroduction.

Our response: One reason for creating a relatively large NEP area, rather than one or more small NEP areas, is to make it highly unlikely that any wood bison will wander outside the boundaries of the area, in which case those animals would have threatened status given the species' current status under the ESA. A large NEP area provides greater protection for landowners in the region. Wood bison generally do not migrate long distances. Experience indicates that, in good habitat, they will establish relatively stable home ranges near a release site, which will slowly expand depending on how much populations are allowed to grow. Wood bison populations are not migratory, as many caribou populations are. The three areas where wood bison herds could actually be reestablished are illustrated in the EA and in Figure 1 in paragraph (x)(2)(i) of the rule portion of this document.

Comment: One commenter stated that the Service should refrain from issuing any final rule until after the appropriate management plans have been drafted and circulated for review, and that we should consider any comments on the management plans when finalizing the reintroduction rule.

Our response: We do not agree that a final rule should be delayed until management plans are completed. A key purpose of this rulemaking process is to establish a clear and

stable regulatory environment that provides protection for other land uses and management flexibility that will allow management planning and implementation to proceed. As the lead management entity, the State of Alaska can determine when a specific planning and implementation effort should proceed.

Comment: One commenter stated that the bison reintroduction efforts must be designed to achieve an effective population size of greater than 500 animals and preferably up to 1000 animals, citing Hedrick, 2009, and the 2010 IUCN bison status report and Guidelines (Gates *et al.* 2010.).

Our response: The Service and ADF&G are aware of the importance of population size in maintaining genetic diversity, and the issue is discussed in section 2.7 of the EA and will be a consideration during development of site-specific management plans.

Comment: One commenter suggested that it will take decades for wood bison to reach a level that can support hunting.

Our response: Experience in managing other bison herds and population modeling indicate that founding populations of at least 40 bison could grow to approximately 400 animals in 10–15 years. Population growth and future harvest opportunities are addressed in section 2.6 of the EA.

Comment: Two commenters suggested that the Service should prepare a Recovery Plan for wood bison before any reintroductions take place.

Our response: The Service does not intend to prepare a recovery plan for this species. The Canadian wood bison recovery plan and recovery strategy provide the over-arching approach to recovery of this species range-wide, and site-specific management plans to be prepared by ADF&G will specify how each reintroduction will be conducted. There would be no benefit in preparing an additional recovery plan under the ESA. In addition, wood bison currently exist in the wild only in Canada, and the Service does not prepare recovery plans for species that occur only in foreign countries.

Findings

Based on the best scientific and commercial data available (in accordance with 50 CFR 17.81), the Service finds that reintroducing wood bison to Alaska and the associated protective measures and management practices under this final rulemaking will further the conservation of the species. The nonessential experimental population status is appropriate for wood bison taken from captive populations and released in Alaska because the loss of a wood bison NEP from Alaska will not reduce the likelihood of the species' survival in its current range in Canada and will not appreciably reduce the likelihood of survival of the species in the wild. The Service additionally finds that the less stringent section 7(a)(4) conference requirements associated with the nonessential designation do not pose a threat to the recovery and continued existence of wood bison.

An NEP designation provides important assurances to stakeholders and the State of Alaska regarding regulatory compliance requirements relating to a listed species. This conservation effort would not occur without such assurances.

Hunting has been demonstrated to serve as an important management tool for the long-term conservation of wood bison on the landscape, in part because it is the primary means by which herd size can be maintained within the carrying capacity of remote reintroduction sites. In addition, biologically sustainable harvest can help build support for wood bison conservation among constituents. Given that reintroduced wood bison will be designated as a nonessential, experimental population, hunting will be an allowed take based on sustained yield principles as established by the Alaska Department of Fish and Game. This finding applies only to the specific circumstances relating to establishing an NEP for wood bison in Alaska.

Required Determinations

Regulatory Planning and Review (Executive Orders 12866 and 13563)

Executive Order 12866 provides that the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget will review all significant rules. The Office of Information and Regulatory Affairs has determined that this rule is not significant.

Executive Order 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this rule in a manner consistent with these requirements.

Regulatory Flexibility Act

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 (5 U.S.C. 801 *et seq.*), whenever a Federal agency publishes a notice of rulemaking for any proposed or final rule, it must prepare, and make available for public comment, a regulatory flexibility analysis that describes the effect of the rule on small entities (i.e., small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. The SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant

economic impact on a substantial number of small entities. We certify that this rule will not have a significant economic effect on a substantial number of small entities. The following discussion explains our rationale.

The area affected by this rule consists of State, Federal, and private lands in interior Alaska. Reintroduction of wood bison associated with this final rule would not have any significant effect on recreational activities in the NEP area. We do not expect any closures of roads, trails, or other recreational areas. We do not expect wood bison reintroduction activities to affect the status of any other species, or other resource development actions within the release area (Fortin and Andruskiw 2003, p. 804). In addition, this final rulemaking is not expected to have any significant impact on private activities in the affected area. The designation of an NEP for wood bison in Alaska will significantly reduce the regulatory requirements associated with the reintroduction of wood bison; will not create inconsistencies with other agency actions; and will not conflict with existing or future human activities, including other resource development, or Tribal, other private, and public use of the land. This final rule will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises.

Lands within the NEP area that may be affected include the Yukon, Tanana, and Kuskokwim River drainages within Alaska. Many private landowners have indicated

support for the presence of wood bison on their lands in the future. However, some major private landowners have expressed concerns about the potential legal and regulatory burdens related to the ESA and wood bison, including effects on other resource development activities, such as (a) the possibility of natural gas extraction in an area near the southern end of the Minto Flats State Game Refuge; (b) the potential for petroleum-related developments on the Yukon Flats; and (c) mineral development adjacent to the lower Innoko/Yukon River area. The 4(d) special rule includes provisions to ensure that the reintroduction of wood bison will not impede these or any other existing or potential future resource development activities.

The existence of a wood bison NEP in Alaska will not interfere with actions taken or planned by other agencies. Federal agencies most interested in this rulemaking include the Service, the Bureau of Land Management, the National Park Service, and the Bureau of Indian Affairs. The U.S. Forest Service has provided land to help support bison in captivity prior to release. This final rulemaking is consistent with the policies and guidelines of the other Department of the Interior bureaus. Because of the substantial regulatory relief provided by the NEP designation, we believe the reintroduction of wood bison in the areas described will not conflict with existing or future human activities on public lands administered by these agencies.

This final rule will not materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients. This rule will not raise novel

legal or policy issues. The Service has previously designated experimental populations of other species at numerous locations throughout the nation.

On the basis of this information, as stated earlier, we certify that this rule will not have a significant economic effect on a substantial number of small entities.

Unfunded Mandates Reform Act

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), the NEP designation will not place any additional requirements on any city, village, borough, or other local municipalities. The specific sites where the NEP of wood bison will occur include predominantly State, Federal, and private lands in central Alaska. Many landowners and agencies have expressed support for this project. The State has expressed support for accomplishing the reintroduction through an NEP designation. Accordingly, the NEP will not “significantly or uniquely” affect small governments. A Small Government Agency Plan is not required.

The NEP designation for wood bison in Alaska will not impose any additional management or protection requirements on the State or other entities. ADF&G has determined that restoring wood bison to Alaska is a high priority, and has voluntarily undertaken all efforts associated with this restoration project. Since this rulemaking does not require that any action be taken by local or State government or private entities, we have determined and certify pursuant to the Unfunded Mandates Reform Act, 2 U.S.C.

1501 *et seq.*, that this rulemaking will not impose a cost of \$100 million or more in any given year on local or State governments or private entities (i.e., it is not a “significant regulatory action” under this Act).

Takings (E.O. 12630)

In accordance with Executive Order 12630, we have determined that the establishment of a wood bison NEP will not have significant takings implications. Designating reintroduced populations of federally listed species as NEPs significantly reduces the ESA’s regulatory requirements with respect to that species within the NEP area. Under NEP designations, the ESA requires a Federal agency to confer with the Service if the agency determines its action within the NEP area is likely to jeopardize the continued existence of the reintroduced species. However, even if a proposed Federal agency action would completely eliminate a reintroduced species from an NEP, the ESA would not compel the agency to deny a permit or cease any activity as long as the Service does not foresee that the activity may jeopardize the species’ continued existence throughout its range. Furthermore, the results of a conference are advisory and do not restrict agencies from carrying out, funding, or authorizing activities. Additionally, the section 4(d) special rule stipulates that unintentional take (including killing or injuring) of the reintroduced wood bison will not be a violation of the ESA, when such take is incidental to an otherwise legal activity (e.g., oil and gas development or mineral extraction).

Multiple-use management of lands within the NEP area by government, industry, or recreational interests will not change as a result of the NEP designation. Because of the substantial regulatory relief provided by NEP designations, we do not believe the reintroduction of wood bison will conflict with existing human activities or hinder public use of the NEP area. Private landowners and others who live in or visit the NEP area will be able to continue to conduct their usual resource-gathering activities. The State of Alaska, through ADF&G, is a strong supporter of wood bison reintroduction under the NEP designation and has led the development and implementation of the restoration effort. A takings implication assessment is therefore not required because this rule: (1) will not effectively compel a property owner to suffer a physical invasion of property, and (2) will not deny economically beneficial or productive use of the land or aquatic resources. This rule will substantially advance a legitimate government interest (conservation of a listed species) and will not present a barrier to any reasonable and expected beneficial use of private property.

Federalism (E.O. 13132)

In accordance with Executive Order 13132, we have considered whether this rule has significant Federalism effects and have determined that a Federalism assessment is not required. This rule will not have substantial direct effects on the States, on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. In keeping with Department of the Interior policy, we requested information from and coordinated

development of this final rule with the affected resource agencies in the State of Alaska. No intrusion on State policy or administration is expected, roles or responsibilities of Federal or State governments will not change, and fiscal capacity will not be substantially directly affected. The special rule will maintain the existing relationship between the State and the Federal Government and is being undertaken in coordination with the State of Alaska. The State endorses the NEP designation as the most feasible way to pursue wood bison restoration in Alaska, and we have cooperated with ADF&G in preparing this final rule. Therefore, this final rule does not have significant Federalism effects or implications that would warrant the preparation of a Federalism Assessment pursuant to the provisions of Executive Order 13132.

Civil Justice Reform (E.O. 12988)

In accordance with Executive Order 12988, the Office of the Solicitor has determined that this rule will not unduly burden the judicial system and will meet the requirements of sections (3)(a) and (3)(b)(2) of the Order.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This final rule does not contain new information collection requirements, and a submission under the Paperwork Reduction Act (PRA) is not required. The Office of Management and Budget has approved the reporting requirements associated with experimental populations and has assigned OMB Control Number 1018–0095, expiring

on May 31, 2014. We may not conduct or sponsor and you are not required to respond to a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act

In compliance with all provisions of the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*), we have analyzed the impact of this final rule. Based on this analysis and additional information resulting from peer review and public comment on the action, we have determined that there are no significant impacts or effects caused by this rule. We prepared a draft EA on the proposed action and made it available for public inspection: (1) in person at the U.S. Fish and Wildlife Service's Regional Office (see ADDRESSES), and (2) online at <http://www.regulations.gov>. Even though not strictly required, in the interest of full disclosure and to recognize the potential controversy associated with this action, we prepared a final EA and a Finding of No Significant Impact to document our conclusions.

Government-to-Government Relationship with Tribes (E.O. 13175)

In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951), Executive Order 13175, and the Department of the Interior Manual Chapter 512 DM 2, the Service, through ADF&G, has coordinated closely with the Tribal governments near potential release sites throughout development of this project and rulemaking process. The Service extended an invitation for consultation to all Tribes

within the NEP area, participated in several consultation sessions, and has fully considered information received through the Government-to-Government consultation process, as well as all comments submitted during the public comment period by Tribal members or Tribal entities on the NEP designation and wood bison reintroduction.

Energy Supply, Distribution, or Use (E.O. 13211)

Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. Because this rule is not expected to significantly affect energy supplies, distribution, and use, it is not a significant energy action. Therefore, no Statement of Energy Effects is required.

References Cited

A complete list of all references cited in this rule is available at <http://www.regulations.gov> and upon request from the Fish and Wildlife Service's Regional Office, Fisheries and Ecological Services (see **ADDRESSES**).

Authors

The primary authors of this rule are Sonja Jahrsdoerfer, U.S. Fish and Wildlife Service, Anchorage, AK, and Bob Stephenson, Alaska Department of Fish and Game (retired), Fairbanks, AK.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

Accordingly, we amend part 17, subchapter B of chapter I, title 50 of the U.S. Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

AUTHORITY: 16 U.S.C. 1361–1407; 1531–1544; 4201–4245; unless otherwise noted.

2. Amend § 17.11(h) by republishing the current entry for “Bison, wood” under “Mammals” in the List of Endangered and Threatened Wildlife, and adding a new entry for “Bison, wood” to follow, so that both entries will read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historical range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
Mammals							
*	*	*	*	*	*	*	
Bison, wood	<i>Bison bison athabasca</i>	Canada, Alaska	Entire	T	3, 803	NA	NA
Bison, wood	<i>Bison bison athabasca</i>	Canada, Alaska	U.S.A. (Alaska)	XN	835	NA	17.84(x)
*	*	*	*	*	*	*	

3. Amend § 17.84 by adding a new paragraph (x) to read as follows:

§ 17.84 Special rules—vertebrates.

* * * * *

(x) Wood bison (*Bison bison athabasca*).

(1) Wood bison within the area identified in paragraph (x)(2)(i) of this section are members of a nonessential experimental population (NEP) and will be managed primarily by the State of Alaska (State), through its Department of Fish and Game (ADF&G), in cooperation with the Service, in accordance with this rule and the respective management plans.

(2) *Where are wood bison in Alaska designated as an NEP?*

(i) The boundaries of the NEP area encompass the Yukon, Tanana, and Kuskokwim River drainages in Alaska (Figure 1). The NEP area includes much of the wood bison's historical range in Alaska, and the release sites are within the species' historical range. The NEP area is defined as follows: the Yukon River drainage from the United States–Canada border downstream to its mouth; the Tanana River drainage from the United States–Canada border downstream to its confluence with the Yukon River; and the Kuskokwim River drainage from its headwaters downstream to its mouth at the Bering Sea.

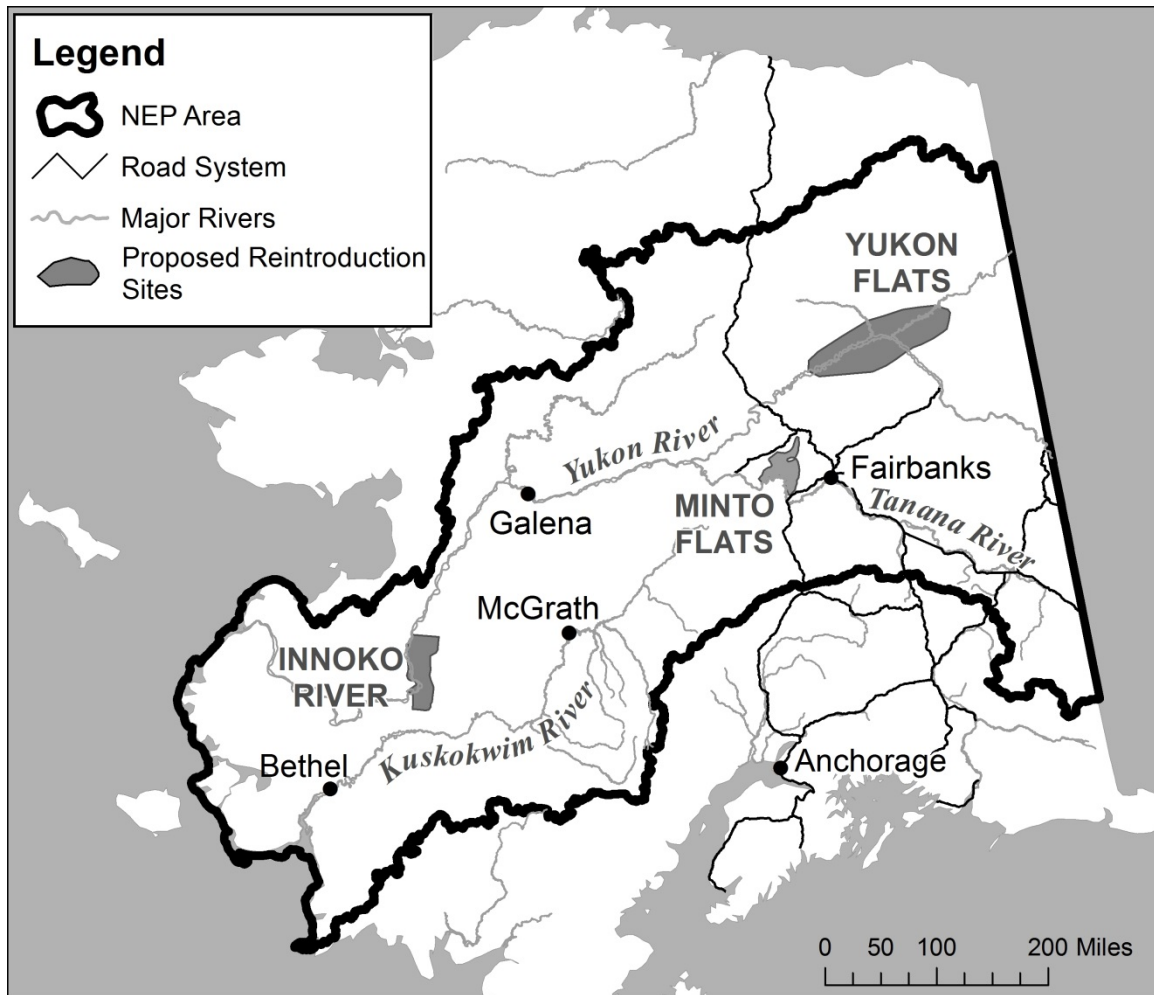


Figure 1. Boundaries of the wood bison NEP (black line) and location of the three sites for wood bison reintroduction in Alaska (gray areas).

(ii) Any wood bison found within the Alaska wood bison NEP area will be considered part of the NEP. The bison will be managed by the State to prevent establishment of any population outside the NEP area.

(3) *Under what circumstances might an Alaska wood bison NEP be eliminated?*

(i) We do not anticipate eliminating all individuals within an Alaska wood bison NEP unless:

(A) The State deems the reintroduction efforts a failure or most members of

reintroduced populations have disappeared for any reason;

(B) Monitoring of wood bison in Alaska indicates appreciable harm to other native wildlife, such as the introduction of disease or other unanticipated environmental consequences associated with their presence; or

(C) Legal or statutory changes reduce or eliminate the State's ability to complete the restoration effort as designed and intended in its management plans, with the management flexibility and protection of other land uses (including other resource development) provided in this NEP designation.

(ii) If any of the circumstances listed in paragraph (x)(3)(i) of this section occur, some or all wood bison may be removed from the wild in Alaska by any method deemed practicable by the State, including lethal removal. If the reintroduction of wood bison under this nonessential experimental designation is discontinued for any reason and no action is taken by the Service and the State to change the designation, all remaining wood bison in Alaska will retain their NEP status.

(4) *Which agency is the management lead for wood bison in Alaska?* The Alaska Department of Fish and Game will have primary responsibility for leading and implementing the wood bison restoration effort, in cooperation with the Service, and will keep the Service apprised of the status of the effort on an ongoing basis. The Service will retain responsibility for ensuring compliance with all provisions of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), including compliance with section 7 for actions occurring on National Wildlife Refuge and National Park Service lands.

(5) *What take of wood bison is allowed in the NEP area?* In the following instances, wood bison may be taken in accordance with applicable State fish and wildlife conservation laws and regulations:

(i) Hunting will be an allowed take based on sustained yield principles as established by ADF&G.

(ii) A wood bison may be taken within the NEP area, provided that such take is not willful, knowing, or due to negligence, or is incidental to and not the purpose of the carrying out of an otherwise lawful activity, including but not limited to recreation (e.g., trapping, hiking, camping, or shooting activities); forestry; agriculture; oil and gas exploration and development and associated activities; construction and maintenance of roads or railroads, buildings, facilities, energy projects, pipelines, and transmission lines of any kind; mining; mineral exploration; travel by any means, including vehicles, watercraft, snow machines, or aircraft; tourism; and other activities that are in accordance with Federal, State, and local laws and regulations and specific authorizations. Such conduct is not considered intentional or “knowing take” for purposes of this regulation, and neither the Service nor the State will take legal action for such conduct. Any cases of “knowing take” will be referred to the appropriate authorities for prosecution.

(iii) Any person with a valid permit issued by the Service under 50 CFR 17.32 or by ADF&G may take wood bison for educational purposes, scientific purposes, the enhancement of propagation or survival of the species, zoological exhibition, and other conservation purposes consistent with the ESA. Additionally, any employee or agent of the Service or ADF&G designated for such purposes, acting in the course of official duties, may take a wood bison if such action is necessary:

- (A) For scientific purposes;
 - (B) To relocate a wood bison to avoid conflict with human activities;
 - (C) To relocate a wood bison if necessary to protect the wood bison;
 - (D) To relocate wood bison within the NEP area to improve wood bison survival and recovery prospects or for genetic purposes;
 - (E) To relocate wood bison from one population in the NEP area into another, or into captivity;
 - (F) To relocate wood bison that have moved outside the NEP area back into the NEP area or remove them;
 - (G) To aid or euthanize a sick, injured, or orphaned wood bison;
 - (H) To dispose of a dead wood bison, or salvage a dead wood bison for scientific purposes; or
 - (I) To aid in law enforcement investigations involving wood bison.
- (iv) Any person may take a wood bison in defense of the individual's life or the life of another person. The Service, the State, or our designated agent(s) may also promptly remove any wood bison that the Service, the State, or our designated agent(s) determine to be a threat to human life or safety. Any such taking must be reported within 24 hours to the location identified in paragraph (x)(5)(vi) of this section.
- (v) In connection with otherwise lawful activities, including but not limited to the use and development of land, provided at paragraph (x)(5)(ii) of this section, the Federal Government, the State, municipalities of the State, other local governments, Native American Tribal Governments, and all landowners and their employees or authorized agents, tenants, or designees may harass wood bison in the areas defined in paragraph

(x)(2)(i) of this section, provided that all such harassment is by methods that are not lethal or physically injurious to wood bison and is reported within 24 hours to the location identified in paragraph (x)(5)(vi) of this section.

(vi) Any taking pursuant to paragraph (x)(5)(ii) of this section must be reported within 14 days by contacting the Alaska Department of Fish and Game, 1300 College Road, Fairbanks, AK 99701; (907) 459–7206. ADF&G will determine the most appropriate course of action regarding any live or dead specimens.

(6) What take of wood bison is not allowed in the NEP area?

(i) Except as expressly allowed in paragraph (x)(5) of this section, all the provisions of 50 CFR 17.31(a) and (b) apply to the wood bison identified in paragraph (x)(1) of this section.

(ii) Any manner of take not described under paragraph (x)(5) of this section is prohibited in the NEP area.

(iii) A person may not possess, sell, deliver, carry, transport, ship, import, or export by any means whatsoever any of the identified wood bison, or parts thereof, that are taken or possessed in a manner not expressly allowed in paragraph (x)(5) of this section or in violation of the applicable State or local fish and wildlife laws or regulations or the ESA.

(iv) A person may not attempt to commit, solicit another to commit, or cause to be committed any take of wood bison, except that take expressly allowed in paragraph (x)(5) of this section.

(7) How will the effectiveness of the wood bison reintroduction be monitored?

ADF&G will monitor the population status of reintroduced bison herds at least annually

and will document productivity, survival, and population size. The Service or other Federal agencies may also be involved in population monitoring, particularly where National Wildlife Refuge System or Bureau of Land Management lands are involved. Tribal governments or other organizations may also participate in population monitoring and other management activities. Depending on available resources, monitoring may occur more frequently, especially during the first few years of reestablishment efforts. This monitoring will be conducted primarily through aerial surveys and will be accomplished by State or Service employees, through cooperative efforts with local governments, or by contracting with other appropriate species experts.

(8) *What other provisions apply to this special rule?*

If any particular provision of this rule or the application of any particular provision to any entity or circumstance is held invalid, the remainder of this finding and rule and the application of such provisions to other entities or circumstances shall not be affected by such holding.

Dated: April 24, 2014

Signed: Rachel Jacobson

Principal Deputy Assistant Secretary for Fish and Wildlife and Parks

Billing Code 4310-55-P

[FR Doc. 2014-10506 Filed 05/06/2014 at 8:45 am; Publication Date: 05/07/2014]